**Senator Arlen Specter's Floor Statement on the Unfair Foreign Competition Act of 2010**
March 4, 2010

**By Mr. SPECTER (for himself, Mr. *Casey*, and Mr. *Brown*, of Ohio):**

**S. 3080**. A bill to provide for judicial determination of injury in certain cases involving dumped and subsidized merchandise imported into the United States, and for other purposes; to the Committee on Finance.

**Mr. SPECTER**. Mr. President, I have sought recognition today to introduce the Unfair Foreign Competition Act of 2010. This legislation provides a private right of action for domestic manufacturers injured by illegal subsidization and dumping of foreign products into U.S. markets. These anticompetitive, predatory trade practices steal jobs from our workers, profits from our companies, and growth from our economy.

Job creation and job retention in this country depend in large part on our ability to enforce existing trade laws. At a time when unemployment remains at nearly 10 percent and our economic future is at stake, it becomes even more important that we focus on trade priorities which too long have been sacrificed for foreign policy and defense interests.

The latest trade numbers demonstrate that the U.S. trade deficit with China in November 2009 was $20.2 billion. Over the years, imports from China have exceeded our imports by a staggering $208.6 billion. This is not evidence that American manufacturers cannot produce goods efficiently or compete with foreign markets; rather, it is evidence of unlawful behavior on the part of China. Such behavior is tantamount to international banditry, and it must not be tolerated.

In the current environment, I believe it is necessary for an injured industry to have an opportunity to go into Federal court and seek enforcement of our country's trade laws.

My legislation addresses two specific types of illegal trade practices: dumping, which occurs when a foreign producer sells a product in the United States at a price that is below the producer's sales price in its home market or at a price which is lower than its cost of production, and subsidizing, which occurs when a foreign government provides financial assistance to benefit the production, manufacture, or exportation of a good.

Under current law, the International Trade Commission and the Department of Commerce conduct antidumping and countervailing duty investigations and 5-year reviews under title VII of the Tariff Act of 1930. U.S. industries may petition the ITC and Commerce for relief from dumped and subsidized imports. If Commerce finds that an imported product is dumped or subsidized and the ITC finds that the petitioning industry is materially injured or threatened with material injury, an antidumping duty order or countervailing duty order will be imposed to offset the dumping or subsidies.

Because current administrative remedies have not been consistently and effectively enforced, I am introducing private right of action legislation to enforce the law. My legislation would allow petitioners to choose between the ITC and their local U.S. district court for the injury determination phase of their investigation. Doing so gives injured domestic producers the opportunity as private plaintiffs to control the litigation in seeking enforcement of our trade laws. If injury is found, U.S. Customs and Border Protection would then assess duties on future importation of the article in question. The legal standard for determining dumping margins, established by the Commerce Department, would remain unchanged.

This legislation is similar to legislation I have introduced as far back as 1982 when I originally sought injunctive relief. But this bill has been modified to comply with World Trade Organization rules.

In December 2004, the United States took action to comply with WTO rulings on the Antidumping Act of 1916 which provided a private cause of action and criminal penalties for dumping by prospectively repealing the act. The United States also took action in February 2006 to comply with WTO rulings on the Continued Dumping and Subsidy Offset Act which requires the distribution of collected antidumping and countervailing duties to petitioners and interested parties in the underlying trade proceedings. In both cases, the WTO panel found that U.S. law allowed an impermissible specific action against dumping and subsidization.

The legislation I introduce today has been adapted to these changes in law and allows for a determination of injury in accordance with our international obligations. Aggressive policy measures, such as this legislation, are necessary to prevent foreign producers--China in particular--from causing a major crisis for our domestic producers.

In testimony before the ITC earlier this year, I noted that we have a complicated relationship with China. I was one of 15 Senators who opposed China's entrance into the WTO in 2000. With China's economy still widely under state direction and characterized by dubious trade practices, I believed Chinese membership in the WTO would present a likelihood of trade distortion and market disruption. And that is why I voted against it in 2000.

Congress heeded some of the concerns which I and others expressed and inserted a China-specific safeguard provision under section 421 of the Trade Act. But such a safeguard is only as effective as the President's willingness to enforce it. Seven petitions have been filed under section 421 since its inception. Of these, the ITC has made an affirmative determination of injury in five cases. Yet only one determination, handed down in the most recent Chinese tires case, has been upheld by the President. Despite overwhelming evidence to support the ITC's findings of injury, President Bush rejected all four previous petitions for relief on the ground that providing import relief was not in the economic interest of the United States. Since President Bush's decision, countless jobs in my State and across the country have been lost and the trade deficit

has widened. It is difficult to understand how providing import relief was not in our economic interest.

President Obama's decision to uphold the ITC rulings in the Chinese tires case last year is a step in the right direction, but much more needs to be done to ensure that domestic industries enjoy the protection afforded to them by existing trade laws.

While it is my hope that this administration and future administrations will evaluate trade remedies objectively in terms of economic consequences, this act will provide a valuable tool for the domestic industry. I ask my colleagues on both sides of the aisle to join me in supporting this legislation.

The enforcement of trade laws should not be a partisan issue. To those who decry our enforcement mechanisms as unabashedly protectionist, let me be clear. I believe in free trade. International trade and open markets are crucial to the economic prosperity of this country. But the essence of free trade is selling goods at a price equal to the cost of production and a reasonable profit. When one country engages in dumping or subsidization at the expense of other countries, it is the antithesis of free trade.

Let me remind those who criticize our domestic safeguards that President Ronald Reagan, a staunch advocate of open markets, signed into law agreements limiting the imports of autos and steel and pushed for the Plaza Accord in 1985 which raised the value of the yen and made Japanese imports more expensive. President Reagan understood that free trade did not mean wholly unfettered, unregulated trade. Free trade does not mean turning a blind eye to illegal and unsavory practices committed by our trading partners.

I have argued that enforcement of our trade laws is critical to ensuring that our domestic manufacturers have a fair opportunity of competing with foreign producers. But even the most stringent enforcement will be insufficient to fully counter the effects of substandard labor, trade, and environmental practices, particularly those practiced by China. The safeguard measures the United States negotiated in advance of China's entry into the WTO were designed to limit the destructive effects of surging Chinese imports on domestic producers. As a result, China's succession to the WTO accelerated a ``race to the bottom'' in wages and environmental quality.

Given these factors, in addition to China's mixed record on providing market access to the United States and its failure to provide protection of U.S. intellectual property rights, I urge that the Congress reexamine our trade agreement the United States signed with China and, if necessary, seek to withdraw permanent normal trade relations status from China. Such a withdrawal would be a serious measure, but we must be willing to demonstrate that we are serious about holding China to its international commitments.

When the United States granted most-favored-nation status to China in 2000, we lost our ability to demand that China play by the rules. We may have to regain this leverage if we are to maintain an equitable trading relationship with China and keep our domestic industry strong.

As President Obama recently noted in his remarks at the Senate Democratic Conference, the United States is home to some of the most innovative, skilled, and efficient workers in the world. But advances in efficiency and innovation by our producers cannot make up for the unfair advantage held by countries that engage in illegal trade practices. Our industries can compete if the playing field is level, but if foreign exporters are not held accountable, and can freely undercut American producers with dumped goods and government subsidies, this country's economic future will be at risk. We must take a stand and we must do it now.